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No. 211.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

TEXTILE WORKERS UNION OF AMERICA,
Petitioner,

v.

LINCOLN MILLS OF ALABAMA.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF

For Lincoln Mills of Alabama.

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BRIEF

For Lincoln Mills of Alabama.

STATEMENT OF THE CASE.

A written collective bargaining agreement was executed between the Petitioner, Textile Workers Union of America, and Lincoln Mills of Alabama (hereinafter referred to as the "Union" and the "Company") on June 27, 1953. (R.

4-18). This Agreement provided that upon sixty days' notice given by either party prior to July 3, 1954 such Agreement would terminate as of that date (R. 18). The Record shows that as a result of appropriate notices given by the parties, that the Agreement did, in fact, expire on July 3, 1954 (R. 34, 44).

The Agreement contained, inter alia, a detailed Grievance Procedure, set forth in Article VIII thereof (R. 13-15), with specified time limits at each step if the grievance remained unresolved in the preceding step.

Article IX of the Agreement dealt with strikes, lockouts and arbitration. Paragraphs A through E of Article IX (R. 15, 16) provided that the Union would not sanction, or call, or approve of any strike or other stoppage of work during the life of the Agreement and the Company would not lock out the employees during the life of the Agreement. The Agreement further provided in Article IX, Paragraph F (R. 15-17) that grievances between the Union and the Company arising from the operation or interpretation of the Agreement, which had not been settled satisfactorily in the grievance procedure would be submitted to arbitration, with certain exceptions. It is significant that the no-strike clause and the arbitration procedure are contained in the same article of the Agreement. The entire Agreement, including the arbitration and no-strike clauses, expired on July 3, 1954.

On June 23, 1954, eight days before the expiration of the Agreement, the Union filed seven written grievances, and on June 24, the Union filed three additional written grievances with the Company. These grievances related to certain alleged changes in job duties and work assignments which the Union was protesting on behalf of the individuals affected. These grievances were attached to the Complaint as Exhibits B through K (R. 19-28). After

these grievances were filed, but before the written answer of the Company to the grievances was due under the terms of the Agreement, the Agreement expired. The Company nevertheless, in keeping with its obligation to bargain in good faith with the Union as the duly certified bargaining agent under the National Labor Relations Act, met and bargained with the Union concerning these grievances. Its ultimate answers and position were reduced to writing and entered as its final written statement of position on copies of the grievances. Such answers appear in the Record as parts of Exhibits B through K, supra.

After several bargaining sessions on the grievances, in which it became apparent that the Company would not accede to the Union's demands, the Union sought to have these disputes submitted to final and binding arbitration under the terms of the Agreement, which had expired some weeks prior to the Union's demand for arbitration. There is no dispute as to the fact that the requests or demands for arbitration of the grievances, as well as the bargaining negotiations relating to the grievances, all took place after the expiration of the Agreement on July 3, 1954. The Company declined to agree to submit the disputes to final and binding arbitration under the terms of the expired agreement, or on any other basis.

The Union thereupon brought the instant case in the District Court for the Northern District of Alabama under Section 301 of the Labor Management Relations Act of 1947, alleging a breach of the Agreement by the Company as a result of its refusal to submit the grievances to final and binding arbitration under the terms of the Agreement which had previously expired. The Complaint sought specific performance of Article IX-F, Arbitration. It sought an Order restraining the Company from "refusing to perform its obligations under Article IX of the Agreement . . ." with respect to the grievances; it sought an injunc-

tion to the same effect. It sought incidental damages and, in the alternative, to specific performance, sought general damages (R. 3, 4).

After hearing the matter, the District Court issued Findings of Fact, Conclusions of Law, and a Judgment in which it held:

(a) That the Union had not proved and was not entitled to recover damages (R. 36);

(b) That the remedy sought by the Union was available because of rights granted under Section 301 of the Labor Management Relations Act of 1947 (R. 34); and

(c) That a mandate should issue directing the Company to arbitrate the subject grievances; and

(d) that a restraining order should issue restraining the Company from failing or refusing to comply with Article IX-F of the Agreement.

From the Order of the District Court, the Company appealed to the Court below. On appeal the Court below, in reversing the trial court, held as follows:

(1) That the Norris-LaGuardia Act does not preclude the granting of the relief sought;

(2) That Section 301 of the Labor Management Relations Act of 1947 does not provide or furnish a basis for granting enforcement of an executory covenant for the submission to arbitration of grievances pursuant to a collective bargaining agreement between an Employer and a Union.

(3) That a collective bargaining agreement is a contract of employment within the meaning of the exclusionary clause in Section 1 of the U. S. Arbitration Act, and, as such, is excluded from the application of the Act by its express terms.

(4) That nothing of Federal origin or in the laws of the State of Alabama provides a basis for granting the relief prayed for and that the District Court therefore had no jurisdiction to grant such relief, and that the Complaint should have been dismissed.

(5) Having concluded that compliance with an executory covenant for arbitration in a collective bargaining agreement would not be enforced by a Federal Court Judgment where the Courts of the State would deny such relief, the Court below did not rule on the question of whether or not such a covenant would survive beyond the termination date of the Agreement in which it was contained.

SUMMARY OF ARGUMENT.

I.

The District Court and the Court below properly found that the Courts of Alabama have and do follow the common law rule against judicial enforcement of executory covenants to arbitrate.

The Court below correctly concluded that Section 301 of the Labor Management Relations Act of 1947 does not confer upon the District Courts authority to grant specific performance or mandatory injunctions enforcing executory covenants to arbitrate in collective bargaining agreements.

Since the law of the State of Alabama does not furnish a basis upon which the District Court could grant the relief sought, such basis must be found under the Federal law, or the remedy does not exist. Section 301 does not furnish the remedy. At most, Section 301 does no more than provide for suits for damages for breach of contracts between labor unions and employers engaged in interstate commerce. Neither the wording of the statute itself nor the legislative history surrounding its enactment indicate that Congress was concerned with anything more than eliminating certain procedural obstacles to suits by and against labor organizations. The wording of the statute and the legislative history do not indicate an intention to create new remedies in the Federal Courts which were not previously available.

The legislative history of Section 301 indicates that Congress specifically considered providing for judicial enforcement of executory covenants to arbitrate and after consideration decided against such legislation.

In enacting the Labor Management Relations Act of 1947, Congress was very careful to spell out those areas

in which the equitable remedies of the Federal Courts would be available. In every such case Congress was careful to remove the jurisdictional limitations placed upon the Federal Courts by the Norris-LaGuardia Act.

Congress had, on more than one occasion, prior to the enactment of Section 301 considered legislation which would have provided for judicial enforcement of such agreements, and on each instance turned down such legislative proposals.

In light of the historic common law rule against judicial enforcement of executory agreements to arbitrate, and in further light of the legislative history of Section 301 and prior legislative proposals in this field, the conclusion must be drawn, as drawn in the Court below, that Section 301 does not provide a basis upon which the District Court could have granted the relief prayed for.

II.

The Court below correctly concluded that the United States Arbitration Act is not applicable in the instant dispute and does not furnish a remedy which may be used by the District Court in decreeing specific performance of executory covenants to arbitrate contained in collective bargaining contracts.

The coverage of the United States Arbitration Act does not extend to the field of industrial disputes or labor relations. It applies only in the field of commercial disputes, and to that end Congress specifically exempted labor disputes from its coverage. The legislative history of the Act fully bears this out.

Section 1 of the United States Arbitration Act specifically excludes "contracts of employment" of ". . . workers engaged in interstate or foreign commerce." A

collective bargaining agreement is a "contract of employment" within the meaning, design, and intent of that exclusionary clause. This, too, is borne out in the legislative history.

Both before and after the enactment of the Arbitration Act, Congress understood that executory agreements to arbitrate contained in "contracts of employment" or collective bargaining agreements were not enforceable in the Federal Courts. In spite of this knowledge, and in the face of attempts to pass legislation changing this long-standing rule in the Federal Courts, Congress has on each occasion refused to provide for judicial enforcement in this field, although proposals to provide for it have been made both by way of amendment to the Arbitration Act itself and by separate legislation designed to accomplish that purpose.

In light of the express exclusion of labor disputes by Section 1 of the U. S. Arbitration Act; in view of the several rejections of Congress of legislation to change the rule in the Federal Courts, and in view of the extensive policy and procedural matters involved in judicial enforcement of labor arbitration agreements, the Federal Courts should not undertake to supply legislation to that end when Congress has failed or refused to enact it. The soundness of such a change in Federal policy is a proper determination for Congress, and not for the Courts.

III.

Because of the jurisdictional limitations placed upon the United States Courts by the Norris-LaGuardia Act in the issuance of injunctions in cases growing out of labor disputes, the District Court did not have jurisdiction of the matter and could not have granted the relief prayed for by the Union.

The dispute herein grows out of a controversy over certain work assignments effected by the Company. Thus, the case is one concerning "terms or conditions of employment" within the meaning of a "labor dispute" as defined in Section 13 (c) of the Norris-LaGuardia Act.

The Norris-LaGuardia Act is in all respects applicable in this case. The legislative history of the Labor Management Relations Act of 1947 and more specifically, of Section 301 thereof, shows that Congress was mindful of the jurisdictional limitations placed upon the Federal Courts by that Act. Such legislative history also shows that although specific proposals were made in Congress with reference to Section 301, which would have removed the jurisdictional restrictions of the Norris-LaGuardia Act in cases brought under the Section, such proposals were rejected and only that portion of Norris-LaGuardia relating to determinations of agency was in any way modified in this connection.

Congress was very careful, in enacting the Labor Management Relations Act of 1947, to provide for the removal of the jurisdictional obstacles of Norris-LaGuardia in those areas where it felt that the equitable or injunctive powers of the Federal Courts should be exercised. Congress, just as carefully, refrained from removing those jurisdictional restrictions in their application to Section 301.

In enacting the Norris-LaGuardia Act, Congress recognized that the jurisdiction of the Federal Courts might from time to time be altered or enlarged and to that end provided that in the application of the Act, the term "United States Court" included any Court of the United States upon which jurisdiction might be conferred, defined, or limited by future Congressional Act. Thus, Congress intended for the Norris-LaGuardia Act to be applicable to all labor disputes as defined in that Act unless it specifically provided to the contrary.

There is no valid distinction between a decree of specific performance and a mandatory injunction which would alter the result here.

In the light of the clear language of the Norris-La-Guardia Act and the specific determination by Congress as to its application to cases brought under Section 301; and Congress's ultimate refusal to limit its application in such cases, that Act stands as a jurisdictional bar to the granting of the relief sought in this matter.

IV.

Even if this Court should hold that executory covenants to arbitrate contained in collective bargaining agreements are enforceable in the Federal Courts, the covenant to arbitrate in the instant matter is not enforceable for reasons outside of those set forth in Sections I, II and III of this Argument.

The Record shows, and it was found by the Court below, that the contract in the instant matter had expired a number of weeks prior to both the request for arbitration by the Union and the refusal to arbitrate by the Company. When the contract expired, a fortiori, the mutual covenants and obligations between the parties under its terms also expired.

When the contract expired the Company was under no legal obligation other than that placed upon it by the Labor Management Relations Act to bargain in good faith with the union in reference to matters of wages, hours and working conditions, including grievances. Such obligation to bargain in good faith does not include a r quirement that the Company agree to final and binding arbitration of differences between it and the Union. The Union likewise was under no obligation other than that imposed on it by the Labor Management Relations Act. Its right

to strike was in no way limited or impaired by its obligations under that Act.

It is apparent that upon the termination of the Agreement that the Union was no longer bound by the no-strike clause contained in Article IX thereof, and the Company was no longer bound by the provisions for final and binding arbitration contained in the same Article of the Agreement. These mutual obligations had furnished the consideration running to the parties for their respective covenants as to these matters.

To force the Company to comply with obligations which existed during the term of an expired contract, while at the same time recognizing that the Union's obligations assumed by it in return therefor, are no longer effective and cannot be enforced is not equitable and does not do equity.

I. The Court Below Correctly Concluded That Section 301 of the Labor Management Relations Act of 1947 Does Not Confer Upon the District Court Authority to Grant Specific Performance or Mandatory Injunctions Enforcing Executory Covenants to Arbitrate in Collective Bargaining Agreements.

At the outset of this matter, the Court below considered the law of Alabama and unanimously agreed with the District Court that the Courts of Alabama will not, under the laws of that State, enforce executory agreements to arbitrate. In the Opinion below, the Court noted the following holding of the Supreme Court of Alabama:

> ". . . The courts are almost unanimous in declaring that equity will not decree specific performance of a contract to submit a cause to arbitration, while it will, in proper cases, entertain a bill to enforce an award. . . ."
>
> **(Ex parte Birmingham Fire Insurance Co., 223 Ala. 370, 172 S. 99.)**

See also in this connection:

> ". . . While the chancery court has jurisdiction and power to enforce an award of arbitrators appointed by the parties, it is without authority to carry out a mere agreement to submit matters in controversy to arbitration. . . ."
>
> **(Caldwell v. Caldwell et al., 157 Ala. 119, 47 So. 268.)**

and **Black v. Woodruff**, 193 Ala. 327, 69 So. 97.

Having found that the Courts of Alabama would not enforce an executory agreement to arbitrate, the Court of Appeals then considered whether or not the Federal Courts were empowered to enforce an executory covernant to arbitrate contained in a labor-management agreement. In this connection, the Court, after reviewing this Court's decision in **Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.**, 348 U. S. 437, 75 S. Ct. 488, 99 L. ed. 510, concluded that Section 301 of the Labor Management Relations Act does not provide or furnish a source or basis for fashioning a rule requiring or permitting the enforcement of an executory covenant for arbitration in a labor agreement. After noting Mr. Justice Frankfurter's view, with whom Justices Burton and Minton concurred, that "no new Federal law concepts of contractual interpretation were created" by the enactment of Section 301, the Court of Appeals then decided the case fully holding that Section 301 did not provide a basis upon which the District Court could have granted the relief prayed for.

Following the lead of this Court in the **Westinghouse** case, the Court of Appeals did not pass upon the question of whether or not Section 301 is unconstitutional. Nor do we believe that the ultimate constitutionality of Section 301 need be decided in the instant matter.

Congress in enacting Section 301 of the Labor Management Relations Act of 1947 did not intend to confer, and did not confer, upon the District Courts power to decree specific performance of executory covenants to arbitrate in collective bargaining agreements, nor did Congress in enacting Section 301 create a new remedy where such remedy was not previously available. Moreover, we submit Congress did not intend to, nor did it create, by enacting Section 301, a remedy available to a litigant who brings his action in a Federal District Court which is different from the remedy available to the litigant who brings the same action in a State Court. **Erie R. R. v. Tompkins**, 304 U. S. 64, 82 L. ed. 1188, 58 S. Ct. 817; **Guaranty Trust Co. v. York**, 326 U. S. 99, 89 L. ed. 2079, 65 S. Ct. 1464; **Bernhardt v. Polygraphic Co.**, 350 U. S. 198, 100 L. ed. 199, 76 S. Ct. 273.

Both State and Federal Courts have historically under the comon law rules and in the absence of statute, refused to enforce executory agreements to arbitrate. This rule has been followed by Federal Courts as well as the Courts of the various states. **Red Cross Lines v. Atlantic Fruit Co.**, 264 U. S. 109, 120-121 (1924); **Simmons Company v. Crew**, 84 F. 2d 82 (1936), 4th Cir., cert. den. 299 U. S. 569 (1936); **Tejas Development Co. v. McGough Bro.**, 165 F. 2d 276, 279-280, 5th Cir. (1947); **Restatement of Contracts**, No. 550 (1932).

While there have been some changes in the common law rule as a result of legislation in a few states, the pattern of legislation in this field among the States has been by no means consistent. See **Gregory & Orlikoff, The Enforcement of Labor Arbitration Agreements**, 17 Chi. L. Rev. 233, 238, 245 (1950); 6 Williston Contracts, Sec. 1920 (Rev. Ed., 1938). Alabama follows the common law rule. See **Ex parte Birmingham Fire Insurance Co.**, supra, **Caldwell v. Caldwell**, supra.

The Congress of the United States has considered the question of enforcement of contracts to arbitrate in labor relations matters on several occasions. In each instance, Congress has failed or declined to provide for judicial enforcement of covenants contained in labor management agreements to arbitrate future disagreements. Such matter was first considered by the Congress in the enactment of the United States Arbitration Act, discussed hereinafter in Section II, infra. Subsequent thereto, the original legislative proposals for the Wagner Act contained provisions for the enforcement of labor arbitration agreements, but these were deleted from that Act prior to its passage.[1]

It is in this background of prior legislative history that the intent and purpose of Section 301 of the Labor Management Relations Act of 1947 and the history surrounding its enactment and inclusion in the Act must be considered. We submit that, first of all, if there was an intent on the part of Congress that Section 301 was to authorize or provide the particular remedy of specific performance or mandatory injunctions to enforce executory agreements to arbitrate in the Federal Courts where it had not previously been available, such an intention would have represented a complete reversal of previous Federal and Congressional policy in the field. The language of Section 301 does not in any way indicate that such a result was intended or contemplated. Nowhere does it make reference to new remedies for injunctive or equitable relief or of equitable remedies for specific enforcement of labor contracts generally much less of executory agreements to

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[1] See S. 2926, 73d Cong., 2d Sess. (1934), Sec. 9 (a); also H. R. 8423, 73d Cong., 2d Sess. (1934), and S. 1958, 74th Cong., 1st Sess. (1935), and H. R. 6187 and H. R. 6228, 74th Cong., 1st Sess. (1935). See also S. 2350, 77th Cong., 2d Sess. (1942); 88 Cong. Rec. 2071.

arbitrate. If the "plain meaning" rule is applied, the language of Section 301 seems clearly to deal only with suits for damages which might result from breaches of contracts between unions and employers. This is borne out by the fact that Section 301 expressly waives jurisdictional requirements relating to amount in controversy and diversity of citizenship and makes specific provision for the enforcement of money judgments against union assets alone. Rules for the determination of agency with reference to labor unions are set forth, indicating that Congress was fully aware of the fact that the Federal Courts were severely limited in making determinations of agency in labor dispute matters by the Norris-LaGuardia Act, 29 U. S. C. A. 101 et seq. The reading of the statute itself, we submit, clearly and obviously implies that Congress' sole intention in enacting Section 301 was to remove some of the procedural obstacles to suits against and by labor unions in order that suits for damages for violations of collective bargaining agreements could be brought in the Federal Courts either by or against unions, or by or against employers, without reference to the diversity of citizenship or jurisdictional amount requirements and without the limitations imposed by various State laws governing suits by and against unincorporated associations. This is in accord with the quotation from Mr. Justice Frankfurter's opinion in the **Westinghouse** case, supra, quoted with approval by the Court below:

> ". . . It was evident that the specific desire was to remove procedural obstacles to suit by and against the union. . . . Senator Taft in proposing an amendment approximating Section 301 as saying:
>
> " 'All we provide in the amendment is that voluntary associations shall in effect be suable as if they were corporations and suable in the Federal Courts if

the contract involves interstate commerce and therefore involves a Federal question.' . . ."

Lincoln Mills of Alabama v. TWUA (R. 52).

We further submit that the clear indication that Congress did not intend, in enacting Section 301, to authorize the Federal Courts to grant injunctive relief (either prohibitory or mandatory) is amply supported by other Sections of the Labor Management Relations Act of 1947, and by a consideration of the whole Act in context. The Act clearly indicates that wherever Congress felt that the equitable remedy of injunction was needed, or to be authorized, Congress was careful to spell out its intention in such regard and to provide when, and by whom, such injunctive relief in the Federal Courts could be sought, and to specify the occasion and circumstances wherein the Federal Courts were authorized to grant such injunctive relief. As examples of this, Congress provided in the Act that the Courts of Appeal could "grant such temporary relief or restraining order as proper in enforcing orders of the National Labor Relations Board" [Section 10 (e), 29 U. S. C., Sec. 160 (e)]; the District Courts are authorized to grant injunctive relief on petitions of the National Labor Relations Board in certain specified cases [29 U. S. C., Sec. 160 (j), 160 (l)] and to enjoin certain strikes upon petition of the Attorney General of the United States (29 U. S. C., Sec. 178).

We submit that it is highly unlikely that Congress, having evidenced throughout the Act its clear intention to spell out and expressly limit those areas in which it authorized the District Courts to grant injunctive relief in labor disputes, intended to create or authorize the remedy sought here by indirection or inference and without express provision for it. Indeed, we submit that the Joint Conference Report on the final bill makes clear that Congress actually intended only that the traditional remedy

of damages for breach of a collective bargaining agreement, whether executed or executory, should alone be applicable.[2] Moreover, when the Act was being considered in the two Houses of Congress, the House Bill and the Senate Bill each contained provisions setting up a procedure for enforcement of agreements to arbitrate under collective bargaining agreements.[3]

Both of these Bills provided that a refusal to abide by an agreement to arbitrate would be an unfair labor practice under the Act and the procedures under the National Labor Relations Act would be available to remedy such an unfair labor practice. However, these provisions in both bills were eliminated and were not included in the final bill. Thus, it cannot be successfully argued, we submit, that Congress was not aware of the problems of arbitration as they existed in the field of labor management relations at the time of the enactment of Section 301. Congress deliberately, we submit, refused to provide for the enforcement of such arbitration agreements. In the light of this, we submit, that Section 301 may not be held to encompass or authorize a remedy which Congress specifically refused to make available in enacting it.[4]

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[2] See H. Conf. Rep. No. 510 on H. R. 3020, 80th Cong., 1st Sess., where after discussing provisions in a bill which would have made it an unfair labor practice to violate terms of a Collective Bargaining Agreement, or an Agreement to submit a dispute to arbitration, the report states as follows:

> "The Conf. Agreement omits this provision of the Senate amendment. Once the parties have made a Collective Bargaining Contract, the enforcement of that contract should be left to the usual processes of law and not to the Labor Relations Board" (pp. 41-42).

[3] See Senate 1126 as reported to the 80th Congress, First Session, and H. R. 3020 as passed by the House, 80th Congress, First Session.

[4] A much more detailed legislative history of Section 301 of the Labor Management Relations Act is contained in the Brief of the Petitioner in Case No. 276, *General Electric Co. v. Local 205, United Electrical, Radio & Machine Workers, etc.*, which is pending before this Court at this time.

Thus we submit that in adopting the reasoning set forth in Mr. Justice Frankfurter's opinion in the Westinghouse case, supra, the Court below was correct in concluding, as it did, that Section 301 of the Labor Management Relations Act of 1947 does not provide or furnish a basis upon which the Federal District Courts may grant specific performance of an executory covenant to arbitrate which may be contained in a collective bargaining agreement.

On February 4, 1957, the United States Court of Appeals for the Seventh Circuit, in **United Steel Workers of America et al. v. Galland-Hemning Manufacturing Company** considered an identical matter and expressly concurred with the ruling of the Court below in the instant matter.[5]

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[5] "It does not follow that because jurisdiction is given to the Federal Courts that there is a new Federal law or concept that authorizes the courts to enforce submission to arbitration . . . Section 301 does not of itself provide or furnish the force for such a rule (requiring or permitting the enforcement of a covenant for arbitration of grievances). We hold there is no legal right to the relief sought. . . ."

(*Lincoln Mills v. TWUA*, R. 54.)

"The legislative history of the provision (301) as related by the Court in *Westinghouse* strongly supports the premise that the sole purpose of Congress was to provide a forum and not create substantive rights. The Fifth Circuit in Lincoln Mills of Alabama v. Textile Workers Union of America, 230 F. 2d 81, relied upon the Westinghouse case in support of its holding that Section 301 is merely a jurisdictional provision. We agree not only with the result reached by the Court in that case, but also with its appraisement of the decision of the Supreme Court in *Westinghouse*. . . ."

(*United Steel Workers of America et al. v. Galland-Hemning Mfg. Co.*, ... F. 2d ..., No. 11,774, 7th Circuit) ... CCH ...; 31 Labor Cases 93,237, CCH.

II. The Court Below Correctly Decided That the United States Arbitration Act is Not Applicable in the Instant Dispute and Does Not Provide a Remedy Which May Be Used By the District Courts in Decreeing Specific Performance of Executory Covenants to Arbitrate in Labor Dispute Matters.

The Court below, after considering the views of the other Courts of Appeal that had this issue before them, concluded that a collective bargaining agreement between a union and a company engaged in commerce is a "contract of employment" within the meaning of the exclusionary clause of Section 1 of the U. S. Arbitration Act, 9 U. S. C. 1,[6] and in so doing, the Court below aligned itself with the majority of those Courts which had previously considered the matter.[7]

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[6] "Sec. 1. 'Maritime transactions,' as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy would be embraced with admiralty jurisdiction; 'commerce,' as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. . . ."

[7] *Signal-Stat Corporation v. Local 475, United Electrical, Radio & Machine Workers*, 235 F. 2d 298, 2d Cir. (1956); *Amalgamated Ass'n v. Pennsylvania Greyhound Lines, Inc.*, 192 F. 2d 310, 3d Cir. (1951); *Pennsylvania Greyhound Lines, Inc., v. Amalgamated Ass'n*, 193 F. 2d 327, 3d Cir. (1952); *United Electrical, Radio & Machine Workers v. Miller Metal Products, Inc.*, 215 F. 2d 221, 4th Cir. (1954); *United Furniture Workers v. Colonial Hardwood Flooring Co.*, 168 F. 2d 33, 4th Cir. (1948); *United Steel Workers of America et al. v. Galland-Henning Mfg. Co.*, supra, 7th Cir.; *Mercury Oil Co. v. Oil Workers International Union*, 187 F. 2d 980, 983, 10th Cir. (1951).

Almost simultaneously with the decision of the Court below in the instant matter, this Court decided the case of **Bernhardt v. Polygraphic Company of America, Inc.**, 350 U. S. 198, 100 L. ed. 199, 76 S. Ct. 273, and in that decision held that Sections 1, 2 and 3 of the U. S. Arbitration Act are "integrated parts of a whole" and are all part of a "regulatory scheme". Thus Section 1 of the U. S. Arbitration Act is applicable to the entire Act and likewise the exclusionary clause under Section 1 of the Arbitration Act would also be applicable.

While there have been some efforts to distinguish or to give technical construction to establish differences or distinctions in meaning by various interpretations of the phrase "contract of employment" as contained in Section 1 of the Arbitration Act, the legislative history available and the design and scheme of regulations in the U. S. Arbitration Act impel the conclusion that a collective bargaining agreement comes within the exclusionary provisions of Section 1 of that Act.

In considering the exclusionary provisions of Section 1 in the context of legislative history, it is apparent that Congress intended to make the U. S. Arbitration Act applicable only to commercial arbitrations and expressly to make it inapplicable to labor-management controversies or contracts.

For several years prior to the enactment of the U. S. Arbitration Act, the American Bar Association had been particularly concerned with providing an economical and speedy method of settlement of disputes between business men and commercial interests growing out of the commercial transactions between them. In order to facilitate the settlement of such disputes, the American Bar Association, by and through its Committee on Commerce, Trade and Commercial Law, undertook to draft and sponsor a Bill in Congress which would provide for the arbitration of com-

mercial disputes where the parties had agreed voluntarily to so arbitrate.[8]

The original Bill as introduced in the Senate and House (S. 4214, H. R. 13522), in 1922 did not contain the language presently contained in Section 1 of the Arbitration Act which excludes from its scope and coverage "contracts of employment". The original bill as introduced was strongly objected to by representatives of organized labor. In particular, strong objection to the Bill was advanced by representatives of the International Seaman's Union of America.[9]

The objections by the Seamen's Union grew out of its stated aversion to judicial interference not only with respect to the individual employment contracts of seamen, but also with respect to its collective bargaining agreements, a number of which were in effect at the time.[10] Objections to the Bill as introduced were also expressed by other labor organizations.[11]

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[8] The actions of the American Bar Association in connection with its preparation and sponsoring of the Act may be found in 50 A. B. A. Rep. 356-362 (1925), also A. B. A. Journal, March, 1925, p. 153.

[9] Proceedings of the 26th Annual Convention of the International Seaman's Union of America, 203, 1923. Also, hearing before a Sub-Committee of the Committee on the Judiciary, U. S. Senate, 67th Congress, 4th Session, S. 4213 and 4215, p. 9.

[10] Three of the Seamen's Union's districts had at that time collective agreements with employers which contained arbitration clauses. These were the agreements covering the East Gulf Sailors Association, Marine Firemen & Water Tenders Union of Atlantic and Gulf, and Marine Cooks and Stewards Association of Atlantic & Gulf. (Proceedings of the 24th Annual Convention of the International Seamen's Union of America, 186, 190, 191 [1921].)

[11] See Proceedings of the 45th Annual Convention of the American Federation of Labor (1925).

Collective agreements containing arbitration clauses existed at that time in trades and industries other than those represented by the Seaman's Union. For example, Garment Workers Union, Electrical Workers, Teamsters, Mine Workers, Boot and Shoe Workers

In the light of the strong opposition from labor generally and perhaps at the suggestion of the then Secretary of Commerce, Mr. Hoover, the Bill was redrafted and reintroduced in Congress in 1923.[12] The Bill as redrafted and reintroduced contained the exclusionary clause which appears in Section 1 of the Act. The Bill containing such language eventually was passed by Congress in 1925.[13]

That the subject-matter of the Bill when pending before Congress was concerned with commercial disputes is best indicated by the fact that the Committee Hearings in Congress described the Bill as one dealing with the arbitration of "interstate commercial disputes". (Joint Hearings before the Sub-Committee of the Committees on the Judiciary on S-1005, H. R. 648 (68th Cong., 1st Sess. 2 [1924].)

The Congressional Reports on the Bill and the extensive hearings which were participated in almost exclusively by representatives of trade and business associations do not contain any material which would in any way indicate that the then pending measure was intended to apply in any manner to the arbitration of labor disputes (H. R. 96, 68th Cong., 1st Sess. 1924; Senate Report 536, 68th Cong., 1st Sess. 1924).

The discussion of the Act on the floor of Congress also clearly evidences the congressional intent to solely provide a basis for the enforcement of arbitration provisions contained in commercial and admiralty contracts. For ex-

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and Machinists all had collective agreements in effect at that time. See 53 A. B. A. Rep. 359 (1928); Millis & Montgomery, Organized Labor 708-713 (1st Ed., 1945); Witte, Historical Survey of Labor Arbitration 23-26 (1952); Oliver, The Arbitration of Labor Disputes, 83 U. of Pa. L. Rev. 206, 213-214 (1934).

[12] Letter from Secretary of Commerce, Herbert Hoover, to Senator Sterling, dated January 31, 1923. Hearing before a Subcommittee on the Committee on the Judiciary.

[13] U. S. Arbitration Act, 43 Stat. 833, re-enacted 61 Stat. 669, 9 U. S. C. Sections 1-14.

ample, Congressman Graham, Chairman of the House Committee on the Judiciary, stated in the debate on the Bill:

> " . . . This Bill simply provides for one thing, and that is to give an opportunity to enforce an agreement in **Commercial Contracts** and Administrative contracts, in an agreement to arbitrate when voluntarily placed in the document by the party to it . . . it creates no legislation; grants no new rights, . . . t in regards to enforcing an agreement in **Commercial Contracts**" (65 Cong. Rec. [1931-1924]). (Emphasis supplied.)

In further discussing the Bill before the Subcommittee hearing, Mr. Piatt, representing the American Bar Association Committee on Commerce, Trade and Commercial Law, clearly pointed out on behalf of the draftsmen that the Bill was not intended to apply against industrial or labor disputes. He said:

> " . . . It was not the intention of this bill to make an industrial arbitration in any sense . . . and so I suggest that in as far as the Committee is concerned, if your Honorable Committee should feel that there is any danger of that, they should add to the bill the following language: 'but nothing herein contained shall apply to seamen or any class of workers in interstate or foreign commerce.' **It is not intended that this shall be an Act referring to labor disputes at all.** It is purely an Act to give the Merchants the right of the privilege of sitting down and agreeing with each other as to what their damages are, if they want to do it. Now that is all there is in this . . . " (Emphasis supplied.)

(Hearing before Subcommittee on the Judiciary on S. 4213, 67th Cong., 4th Sess. 9 [1923].)

Thus it appears that throughout the course of the legislative progress of the U. S. Arbitration Act, both in the Hearings before the Committees of Congress and discus-

sions on the floor of Congress and whenever the pending measure was considered by labor and business alike, it was understood and agreed that the Act was not to have and was not intended to have, any application in the field of labor disputes. This was certainly the understanding of the spokesman for the organized labor movement at that time. This is clearly illustrated by the following report of the Executive Council of the American Federation of Labor in 1925:

> " . . . Protests from the American Federation of Labor and the International Seamen's Union brought an amendment which provides that 'be nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.' This exempts labor from the provisions of the law although its sponsors decided that there was not any intention to include labor disputes . . . "
>
> **(Proceedings of the 45th Annual Convention of the American Federation of Labor, 52 [1925].)**

During the years which followed the passage of the U. S. Arbitration Act, the American Bar Association not only recognized that the Act did not apply in the field of industrial and labor disputes, but considered that it would be desirable that a measure be drafted and enacted which would, in fact, provide for enforcement of agreements to arbitrate in labor disputes.[14]

In 1942 a bill was introduced in the Senate which sought to provide machinery for the enforcement of arbitration clauses in collective bargaining agreements.[15] The purpose

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[14] 51 A. B. A. Rep. 394 (1926). However, the measure met strong opposition from labor and in 1930 the A. B. A. Committee which had been dealing with the measure concluded that "Public opinion is not ready for this legislation" and that "it would be a mistake to press it actively at the present time." 55 A. B. A. Rep. 328 (1930).

[15] S-3250, 77th Cong., 2d Sess., 88th Cong. Rec. 2071.

of that Bill was to extend the U. S. Arbitration Act so as to have it embrace written agreements to arbitrate labor controversies. It was proposed by such Bill to provide for the same type of enforcement of arbitration agreements contained in labor agreements as was provided under the U. S. Arbitration Act for the enforcement of commercial arbitration agreements. 88 Cong. Rec. 2072. This Bill was never reported out of Committee.

Thus, the legislative history of the U. S. Arbitration Act amply supports the conclusion reached by the Court below that collective bargaining agreements are "contracts of employment" within the meaning and intent of the Arbitration Act, and as such were expressly excluded from its coverage. Such a conclusion is strongly reinforced by the recent holding of the Seventh Circuit Court in **United Steelworkers v. Galland Hemning Co.**, supra.[16]

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[16] ". . . On the issue as to whether a collective bargaining agreement constitutes a 'contract of employment' within the exception of Sec. 1, the courts again are sharply divided. Those holding in the negative place much reliance, mistakenly, we think, upon a statement in *J. I. Case Co. v. National Labor Relations Board*, 320 U. S. 332, as follows:

> " 'Contract in labor law is a term the implications of which must be determined from the connection in which it appears. Collective bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. The result is not, however, a contract of employment except in rare cases; no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone. The negotiations between union and management result in what often has been called a trade agreement, rather than in a contract of employment.' "

The court also stated on the following page:

> "After the collective trade agreement is made, the individuals who shall benefit by it are identified by individual hirings . . . But the terms of the employment already have been traded out. There is little left to the individual agreement except the act of hiring."

In our judgment, this statement in *Case* affords no support for the contention that the collective bargaining agreement under the

The argument advanced by the Petitioner in its Brief that grievance arbitrations under labor management con-

circumstances of the instant case should not be characterized as a contract of employment. As the court in *Case* recognized "Contract in labor law is a term the implications of which must be determined from the connection in which it appears." The circumstances there were far different from those here. There, the court was considering an unfair labor practice charge based upon the employer's refusal to bargain with the union. It sought to justify its refusal on the ground that 75% of its employees were working under individual contracts of employment and that any agreement made with the union would affect the rights of such employees under such individual contracts. The court sustained the Labor Board, which had held against the employer. Obviously, the court was not concerned with a contract of employment, not even a trade agreement of which the court speaks. The sole issue was whether the employer was obligated by law to enter into a bargaining negotiation with the union.

In contrast, we are here concerned with an arbitration provision contained in an agreement between the union and the employer which fixes and determines in great detail the rights and obligations of the parties including the employees. As to the latter, it fixes their rates of pay, hours of work and many other details in connection with their employment, such as time and a half for Saturday work, double time for certain designated holidays, premium in the hourly rate of pay under specified conditions, rest periods, time off for lunch periods, seniority rights, sick and accident benefits and vacation rights. Moreover, the rights and obligations of the employer, as well as the union are spelled out in detail.

"We assume that a mere bargaining agreement which the court was discussing in *Case* would not constitute a contract of employment, particularly in a situation where, as in that case, the employees were under individual contracts. Even so, a collective bargaining agreement entered into by a union for the benefit of employees (present or future) is a prospective contract of employment which becomes absolute at the time of hiring. The hiring merges with and becomes a part of the contract of employment, the terms and conditions of which have been determined in advance. To hold that the bargaining agreement at that time does not constitute a contract of employment is to ignore realities. It would mean that there is no contract of employment between an employer and its employees, working under the terms and conditions set forth in a collective bargaining agreement. Such a contract could only exist in a case of individual hiring where the employer and the employee were free to fix the terms and conditions of employment. . . ."

(*United Steelworkers of America, CIO, et al., v. Galland-Henning Mfg. Co.*, No. 11774); 31 Labor Cases, supra.

tracts are something which was beyond the comprehension or contemplation of Congress at the time of the enactment of the U. S. Arbitration Act is completely negative by the actual facts of legislative history. Moreover, its argument that the common law rule under which the courts have traditionally declined to enforce executory agreements to arbitrate should be rejected because of its allegedly shoddy basis completely ignores the basic differences between courts and non-judicial tribunals and their impact upon the constitutional and legal rights of litigants. Such difference was pointed out by this Court in **Bernhardt v. Polygraphic Company of America,** supra.[17]

In the light of the express refusal on the part of Congress to provide for judicial enforcement of agreements to arbitrate contained in collective bargaining contracts; and in the further light of the strong opposition which has been expressed toward such judicial action from various sources, we must disagree with Petitioner's argument that the historic rules against enforcement of arbitration agreements should now be held not to apply to collective bar-

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[17] ". . . For the remedy by arbitration, whatever its merits or shortcomings, substantially affects the cause of action created by the State. The nature of the tribunal where suits are tried is an important part of the parcel of rights behind a cause of action. The change from a court of law to an arbitration panel may make a radical difference in ultimate result. Arbitration carries no right to trial by jury that is guaranteed both by the Seventh Amendment and by Ch. 1, Art. 12th of the Vermont Constitution. Arbitrators do not have the benefit of judicial instruction on the law; they need not give their reasons for their results; the record of their proceedings is not as complete as it is in a court trial; and judicial review of an award is more limited than judicial review of a trial—all as discussed in Wilko v. Swan, 346 U. S. 426, 435-438, 98 L. ed. 168, 175-177, 74 S. Ct. 182. We said in the York case that 'The nub of the policy that underlies Erie R. Co. v. Tompkins is that for the same transaction the accident of a suit by a nonresident litigant in a federal court instead of in a state court a block away should not lead to a substantially different result.' 326 U. S. 103. . . ."

(*Norman C. Bernhardt v. Polygraphic Company of America, Inc.*, supra.)

gaining contracts. In any event, such argument should be addressed to Congress, since it is clearly a matter within the sphere of the legislative and not the judicial branch of Government.

We submit that the decision of the Court below that the U. S. Arbitration Act gives no basis or authority upon which a Federal Court may direct enforcement of an executory covenant to arbitrate in a collective bargaining agreement is sound and correct and should be sustained by this Court.

III. The District Court Had No Jurisdiction to Grant the Relief Prayed for Because of Jurisdictional Limitations Contained in the Norris-LaGuardia Act.

The Court below summarily held that the Norris-LaGuardia Act, 29 U. S. C. A. 101, et seq., did not preclude the granting of the relief sought. Citing **Graham v. Brotherhood of Locomotive Firemen and Engine Men,** 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22. We submit that the Court below was incorrect on this point and that the **Graham** case relied upon by the Court below is distinguishable and not applicable in the instant case. In the **Graham** case, this Court was concerned with a matter which involved the enforcement of rights which had been created and specifically granted by Congress in the Railway Labor Act.[18] This Court held that a denial of the "sole judicial weapon" available to the Petitioners in the Graham case would "strike from labor's hands" the ability to "enforce such rights as . . . secured to them by Federal statute." 338 U. S. 232, at 237.

We point out that in the instant case the Petitioner is not seeking to enforce a specific right granted by Congress or "secured by Federal statute." As we have shown in Section I and Section II, supra, Congress has refused to

[18] 45 U. S. C. A., Sec. 151 et seq.

enact legislation providing for the enforcement of agreements to arbitrate contained in collective bargaining agreements. Congress has not said that any person or labor union or employer has a right to a particular provision in a collective bargaining agreement. Specifically, it did not grant particular rights in reference to enforcing agreements to arbitrate. We submit that it is well settled by the decisions of the Courts that cases involving breaches of collective bargaining agreements do not arise under the laws of the United States simply because such agreement may have been entered into by parties subject to some Federal Act, such as the Railway Labor Act, the National Labor Relations Act, as Amended, or the Fair Labor Standards Act.[19]

The Norris-LaGuardia Act clearly provides that no injunction may issue in a case involving or growing out of a labor dispute except in strict conformity with the express provisions of that Act.

Congress repeated the mandate contained in Section 1 of the Norris-LaGuardia Act, in Section 7 of the same Act, and then set forth in Section 7 the conditions precedent to the granting of injunctive relief in a matter defined as a "labor dispute" in Section 13 of the Act. Those conditions have not been met here, nor are they alleged to

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[19] *Schatte v. International Alliance of Theatrical Stage Employees*, 70 F. Supp. 1008 (S. D. Calif.), aff'd 165 F. 2d 216 (9th Cir.), cert. denied 334 U. S. 812; *Amalgamated Ass'n of Street Electric Ry. & Motor Coach Employees v. Southern Bus Lines, Inc.*, 189 F. 2d 219 (5th Cir.); *Starke v. New York, Chicago & St. Louis R. Co.*, 180 F. 2d 569 (7th Cir.); *Barnhart v. Western Maryland Ry. Co.*, 128 F. 2d 709 (4th Cir.), cert. denied 317 U. S. 671; *Burke v. Union Pacific R. Co.*, 129 F. 2d 844 (10th Cir.); *International Ladies Garment Workers Union v. Jay-Amer Co.*, 228 F. 2d 632 (5th Cir.)

See also *Shulthe's v. McDougald*, 225 U. S. 561, 569; *Gulley v. First National Bank*, 299 U. S. 109, which establish the rule that an action does not arise under a Federal law unless it in fact 'substantially involves a dispute or controversy respecting the validity, construction, or effect of such law."

have been met. Moreover, we point out that Congress recognized that the jurisdiction of various Federal Courts might at some future time be changed or redefined, and accordingly further provided in Section 13 of the Norris-LaGuardia Act that "the term 'Court of the United States' means any Court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the Courts of the District of Columbia."

The prohibitions and limitations against Federal injunctions contained in the Norris-LaGuardia Act have been held applicable to injunctions not only relating to strikes, picketing, or boycotts, but also to injunctions sought against breaches of other contractual obligations, and other conduct not unlike the matter involved and relief sought in the instant matter.[20]

In 1947, when the Labor Management Relations Act was pending, Congress was well aware of the continuing prohibition against Federal Courts' granting injunctive relief in labor disputes as contained in the Norris-LaGuardia Act. Such awareness, as well as opposition to certain provisions proposed to be embodied in Section 301, was clearly expressed by the minority members of the House Committee in the Report on H. R. 3020, which characterized it as "an effort of the bill to open up the Federal Courts to Petitions for Injunction in disputes involving violations of union agreements despite the present provisions of the Norris-LaGuardia Act banning injunctions in labor disputes except after full hearing and after certain findings" (H. R. Rep. 245 on H. R. 3020, 80th Cong., 1st Sess., page 110 [1947]).

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[20] *Iceway Motor Freight, Inc., v. Keystone Freight Lines, Inc.*, 126 F. 2d 931, 10th Cir.; *East Texas Motor Freight Lines v. International Brotherhood of Teamsters*, 163 F. 2d 10, 5th Cir.; *California Association v. The Building Trades Council*, 178 F. 2d 175, 9th Cir.; *Missouri-Kansas-Texas Railway Co. v. Randolph*, 164 F. 2d 4, 8th Cir., cert. den. 334 U. S. 818.

When the Bill originally came before the House, there was provided in Section 302 (which later became Section 301 of the Act as passed) language which expressly removed the prohibitions of the Norris-LaGuardia Act from suits brought under that Section. The House Report in this connection pointed out that:

> "... It also makes the Norris-LaGuardia Act inapplicable in suits and proceedings involving violations of contracts which labor organizations voluntarily and with their eyes open enter into ..."
>
> **(H. Rep. 245 on H. R. 3020.)**

However, when the Bill went into conference, the Report of the Conference Committee indicated that such proposed broad repeal of the Norris-LaGuardia Act had been rejected and only that portion relating to agency (Section 6) had been, or was intended to be, modified by Section 301 as recommended.[21]

The grievances in the instant case involved disputes with reference to work assignments and job duties. Thus it is unmistakably apparent that this case grows out of a "labor dispute" as defined in Section 13 (c) of the Norris-LaGuardia Act, since the controversy clearly concerns

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[21] "Section 302 (c) of the House bill made the Norris-LaGuardia Act inapplicable in actions and proceedings involving violations of agreements between an employer and a labor organization. Only part of this provision is included in the conference agreement. Section 6 of the Norris-LaGuardia Act provides that no employer or labor organization participating or interested in a labor dispute shall be held responsible for the unlawful acts of their agents except upon clear proof of actual authorization of such acts, or ratification of such acts after actual knowledge thereof. This provision in the Norris-LaGuardia Act was made inapplicable under the House bill. Section 301 (e) of the conference agreement provides that for the purposes of Section 301 in determining whether any person is acting as an agent of another so as to make such other person responsible for his actions, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. ..."

(House Conference Report No. 510 on H. R. 3020.)

"terms or conditions of employment" within the meaning of that Section of the Act. **W. L. Mead, Inc., v. International Brotherhood of Teamsters**, 217 F. 2d 6, 1st Cir.; In re **Third Avenue Transit Corp.**, 192 F. 2d 971, 2nd Cir.; **Alcoa Steamship Co., Inc., v. McMahon**, 173 F. 2d 567, 2nd Cir.

We submit further that there can be no real distinction between an injunction and an order of the Court issuing a mandate of specific performance in this matter. See also: **Shubert v. Woodward**, 167 F. 47, 52, 8th Cir.; **Independent Patrolling Workers of New Jersey v. Southern Standard Oil Co.**, 235 F. 2d 401, 3rd Cir.; **U. S. v. Kovich**, 201 F. 2d 470, 7th Cir.; and **Alcoa S. S. Co. v. McMahon**, 81 F. Supp. 541, S. D. N. Y., affirmed 173 F. 2d 567, 2nd Cir., cert. den. 338 U. S. 821.

In the light of the specific prohibitions contained in the Norris-LaGuardia Act, and in the light of the clearly expressed intent of Congress in the enactment of that Act, and of the particular consideration given by Congress to the impact of the Norris-LaGuardia Act on the Labor Management Relations Act, we submit the Norris-LaGuardia Act is in all respects applicable and that the District Court was not empowered to grant the relief prayed for in this matter by virtue of Norris-LaGuardia. As will be pointed out further in Section IV, infra, the Order of the District Court, refused and rejected by the Court below, in effect sought to extend the life of one portion of one Article of the expired Agreement between the parties up to and through the conclusion of the arbitration of the grievances directed by the District Court. In extending the life of that Section of the Agreement (Article IX), it is submitted that the District Court, to do equity, would have of necessity been required to also extend the life of the no-strike clause, a part of the same Article. The law is clear that in the circumstances here enumerated, the District Court could not have enjoined

the Union from striking, nor could it have decreed specific performance by the Union of its no-strike obligation in the expired contract. Yet both the no-strike clause and the arbitration clause here involved are part of the same Article of the Agreement, and even the Petitioner concedes in its Brief that these two matters constituted, in large part, the consideration for the mutual obligations contained in the Agreement.

To by-pass the Norris-LaGuardia Act in this connection, we submit that this Court must decide that Congress did not consider its prohibitions when it was enacting Section 301 or, if it did consider its prohibitions, it must assume that Congress did not intend for them to apply to 301. Such an assumption must, of necessity, be made in the face of the Congressional discussions and of the official Senate and House Reports which enumerate and set forth an express rejection of any intention by Congress to repeal any of the prohibitions contained in the Norris-LaGuardia Act except those expressly set forth. To accomplish this result, this Court would not only have to venture into the field of legislation, but would in effect have to reverse the legislative body, both as to its intent and its enactment in such connection. This, we are certain this Court will not do.

IV. The Action Alleged as a Breach of Contract in the Complaint Did Not Occur Until the Contract Itself Had Fully Expired.

The final point urged by the Union in the Court below is a point which is apparent from an examination of the Record, to-wit: that the alleged incidents which are complained of as breach of the contract did not occur until after the contract had expired and at a time when the contract was no longer in existence. We submit that both at the time arbitration was discussed by the Union, and at the time the Company refused to agree to arbitrate the

disputes in this matter, there was no contract in existence providing for arbitration of grievances or disputes or obligating the Company to arbitrate. It is submitted that the contentions of the Union in the instant matter are predicated, as they were in the District Court, upon a contention that the contract between the parties under which the alleged breach arose continued beyond its agreed term and after its actual expiration date. The relief sought contemplated a unilateral extension of the binding obligations of the contract insofar as only the Company was concerned. We submit that neither the laws of Alabama nor of the United States authorize the granting of specific performance of a contract beyond its term or of an alleged obligation under it which had ceased to exist prior to the time the performance thereof was requested.

The sole purpose and effect of the arbitration provisions of the contract between the parties here before the Court was to create mutual consideration between the Company and the Union whereby the Company agreed that it would follow a specific procedure in the handling, discussion, and attempting to dispose of timely grievances brought by the Union on behalf of the employees during the life of the Agreement, and the Union, in turn, agreed that during the period such procedures were in effect, that it would not exercise, or avail itself of, its legal right to strike. See in this connection Article IX (a) and (f) of the Agreement (R. 15, 16-17).

When the contract expired as of July 3, 1954, the Company once more resumed its normal right to manage its properties and business. It was not bound or obligated to follow any particular procedure, technique, or device in handling or discussing Union or employee complaints or demands. As of that time the Company's only legal obligation in this regard was, by virtue of the terms of the National Labor Relations Act, to bargain collectively with the Union as the collective bargaining agent of its employees

over matters concerning wages, hours, and working conditions. The obligation to bargain over these matters has been construed to include bargaining over grievances. Such obligation to bargain, however, as contained in the Labor Management Relations Act does not carry with it, inherently or otherwise, any requirement that such bargaining over wages, hours, and working conditions, including grievances, must terminate in final and binding arbitration. The Union likewise under the terms of the Labor Management Relations Act was under a legal obligation to bargain in good faith. Such obligation to bargain on the part of the Union did not inherently, or otherwise, carry with it any prohibition against the Union's calling a strike if it was dissatisfied with the results of the bargaining or the Company's response to its demands, complaints, or requests. Both the Company and the Union during the life of the contract, contracted for a limitation of their inherent rights as set forth in the terms of the Agreement. However, when the agreement by its own terms ceased to be in effect, these limitations on the rights of both the Company and the Union simply passed out of existence, and were no longer binding.

As of July 3, 1954 the Union in the instant matter resumed its normal right to resort to the use of economic action or strike over any matter of wages, hours, or working conditions or grievances with which it was dissatisfied or upon which it could not reach an agreement with the Company through the collective bargaining processes. The Company likewise regained its right to take such position as it deemed appropriate as to these matters, even though such position might create an impasse in bargaining. The arbitration provisions of the Agreement were a direct concomitant of the no-strike provisions. When the Agreement terminated, the no-strike provisions and the arbitration provisions both likewise terminated. See **Paterson Parchment Paper Company v. IBEW**, 191 F. 2d 252, 3rd Cir.

While the District Court attempted, by its decree, to extend the Company's obligations under the contract beyond its term by issuing a mandate decreeing that the arbitration provisions of the expired contract were to be carried out by the Company, the District Court obviously was powerless, by virtue of the limitations of the Norris-LaGuardia Act, to issue a decree binding the Union to comply with or observe the no-strike clause.

The Court below did not reach the issue as to the effect of such termination of the contract on the instant controversy since it reversed the District Court on other grounds. It reserved such matter for further consideration if necessary.[22]

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[22] ". . . In the determination of the case before us it was held that since the grievances arose while the collective bargaining agreement was in effect, the Employer was required to arbitrate such grievance subsequent to the termination date of the agreement. Although unwilling to adopt the most recent conclusions of the Third Circuit in construing the United States Arbitration Act, we are impressed by its views with respect to the effect of the termination of a collective bargaining agreement upon Section 301 procedure. After reciting the giving of notice of termination and the failure of negotiations toward a new contract between an employer and a union, the court said:

> "'The old contract thereupon terminated pursuant to the permitted election already made manifest by timely notice as provided in the document itself. The obligation not to strike, like the other obligations of the contract ceased to exist. For this reason, the complaint was properly dismissed. *Paterson Parchment Paper Co. v. International Brotherhood*, 3d Cir., 1951, 191 F. 2d 252.'

"Finding as we do that compliance with a covenant for arbitration in a collective bargaining agreement will not be compelled by a Federal Court judgment where the courts of the state would deny such relief, it follows that there was no enforceable right which could have been either retained or lost upon the termination of the agreement. Hence we need not and do not decide whether such a covenant would survive where, under the applicable law, such a provision might have been enforced during the term of the agreement."

(*Lincoln Mills of Alabama v. TWUA*, R. 54-55.)

It is therefore submitted that independently of other grounds set forth in Sections I, II, and III of this Brief, the fact that the contract between the Union and Company had expired prior to the demand for arbitration by the Union and prior to the refusal to arbitrate by the Company precludes a finding that there was a breach of contract here which warranted any of the relief sought by the Petitioner in the District Court even if such relief was within the powers of the District Court. What was complained of in the District Court was not a simple breach of an executory contract, it was in fact an alleged breach of an expired contract, which alleged breach occurred after any obligations to comply with the terms of the Agreement had ceased to exist by virtue of the prior expiration of the entire Agreement.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that the Judgment of the Court of Appeals for the Fifth Circuit dismissing the Petition in the instant matter should be affirmed by this Court.

Respectfully submitted,

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APPENDIX.

STATUTES INVOLVED.

Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C., Sec. 141 et seq.:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"Sec. 8 (a) (5). It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

"Sec. 8 (d). For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession . . . "

Labor Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C., § 185:

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees

in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of action and proceeding by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

United States Arbitration Act, 43 Stat. 883, re-enacted 61 Stat. 669, 9 U. S. C., §§ 1-14, as amended by Act of September 3, 1954, 68 Stat. 1233:

"Maritime transactions" and "commerce" defined; exceptions to operation of title.

Sec. 1. "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

Validity, Irrevocability, and Enforcement of Agreements to Arbitrate

Sec. 2. A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Failure to Arbitrate Under Agreement; Petition to United States Court Having Jurisdiction for Order to Compel Arbitration; Notice and Service Thereof; Hearing and Determination.

Sec. 4. A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find

that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

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Sec. 8. If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., Sec. 101, et seq.:

Sec. 1. No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

Sec. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect

complainant's property: **Provided, however**, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Sec. 13. (c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or

concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.